

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Juan J. Molina,

Case No. 3:08CV2912

Plaintiff

v.

ORDER

Smearsal, et al.,

Defendant

This is a *pro se* prisoner civil rights suit under 42 U.S.C. § 1983. Plaintiff claims that, after he was attacked by another inmate, one or more of the defendants used excessive force to control the altercation, other defendants failed adequately to investigate the circumstances, and other defendants thereafter were deliberately indifferent to his medical needs.

Pending are several motions. This order rules on those motions and holds further proceedings in abeyance pending defendant's release from custody and appearance in person before the undersigned for a status/scheduling conference.

Plaintiff has filed a "Notice of Intent to Amend and or [*sic*] Complaint" [Doc. 23] and a Motion for Leave to File Amended Complaint. [Doc. 32]. The defendants have filed an opposition to the "Notice of Intent." [Doc. 31].

The “Notice of Intent” shall be overruled as moot; the motion for leave to amend, which is unopposed, shall be granted.

The plaintiff has filed a “Motion for Extension of Time to File Response to Defendant’s [sic] Answer to Plaintiff’s Complaint.” [Doc. 24]. Defendants move to strike this motion on the accurate basis that it is unknown under the Federal Rules of Civil Procedure. [Doc. 26]. Plaintiff has responded to that motion with a “Motion for Court’s Clarification to Courts [sic] Order To Respond to Defendants’ Answer By Plaintiff.” [Doc. 28].

It appears that plaintiff misapprehends that the defendants’ answer constitutes a motion to dismiss because the defendants make that request for relief in their answer. No *motion* to dismiss is pending. Therefore, plaintiff need file no response, and defendants’ motion to strike is well-taken and shall be granted.

Also pending are plaintiff’s “Request of ‘Stay of Costs’ to the Production of Copies in Genuine Need” [Doc. 33], “Request For Production of Documents of Discovery Deposition Pursuant to R. Civ. P. 30.(b)(6) [sic]” [Doc. 34], and “Leave To Conduct Discovery.” [Doc. 35].

In his “Motion for Extension” [Doc. 24], plaintiff states that he will be released from the institution in August, 2009, and placed in a halfway house. Assuming that plaintiff has been or shortly will be released to the halfway house and thereafter will be released on parole, it appears appropriate to overrule without prejudice the three additional pending motions, which relate to pretrial discovery, until plaintiff no longer is in custody. At that time, he can appear before the undersigned in person for a status/scheduling conference. He can then also renew his previously overruled request for assignment of counsel, and otherwise participate more fully in pretrial proceedings.

That being so, it also appears appropriate to stay all further proceedings in this case pending such status/scheduling conference. This means that neither party shall undertake further discovery, file additional pleadings or otherwise act with regard to this litigation without prior motion to and approval by the undersigned.

The plaintiff shall notify this court within two weeks of his release from the halfway house of his availability to attend a status/scheduling conference.

The plaintiff is hereby notified that he is responsible for promptly notifying this court of any changes in his residential/ mailing address, so that he can receive copies of all pleadings and notices.

It is, therefore,

ORDERED THAT:

1. Plaintiff's motion for leave to amend his complaint [Doc. 32] be, and the same hereby is granted;
2. Plaintiff's "Notice of Intent" [Doc. 23] be, and the same hereby is overruled as moot;
3. Defendants' motion to strike plaintiff's motion for extension of time [Doc. 26] be, and the same hereby is granted; plaintiff's motion for extension of time [Doc. 24] shall be, and hereby is stricken;
4. Plaintiff's "Motion for Court's Clarification to Courts [*sic*] Order To Respond to Defendants' Answer By Plaintiff" [Doc. 28] be, and the same hereby is overruled as moot;
5. Plaintiff's "Request of 'Stay of Costs' to the Production of Copies in Genuine Need" [Doc. 33], "Request For Production of Documents of Discovery Deposition Pursuant to R. Civ. P. 30.(b)(6) [*sic*]" [Doc. 34], and "Leave To Conduct Discovery" [Doc. 35] be, and the same hereby are overruled, without prejudice;

6. Further proceedings, including without limitation, discovery, be, and the same hereby are held in abeyance pending further court order and plaintiff's release, whereon the Clerk shall forthwith set a status/scheduling conference, with the plaintiff to appear in person at said conference.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge